

Maintaining the Public Record for Entity Filings

Prepared by the Office of the Secretary of State, May 2009

I. FILING DUTIES OF THE SECRETARY OF STATE

A. Ministerial review; duty to file

- The Secretary of State has ministerial filing authority; filings are accepted and processed by clerical staff in the Division of Corporations, UCC and Commissions.
- Filings are reviewed for completeness and sufficiency of fees. No legal review is done, and there is no investigation of the accuracy or veracity of the information.
- If the document satisfies the filing requirements (the document is legible, all the required information is included, the name is available and the correct filing fee is tendered), the document is accepted for filing.
- If the Secretary of State accepts the filing, the date of receipt becomes the filing effective date.

B. Use of Prescribed Forms

- The Secretary of State has the authority to prescribe and furnish all forms for the entity filings; the use of these forms is mandatory.
- Separate and specific forms have been created for each type of filing and each entity type; the forms are on our website at: <http://www.maine.gov/sos/cec/corp/index.html>
- Each form includes only the information required by law for that filing, with limited exceptions for information the statute designates as optional. Optional information is designated as optional (e.g. "x if applicable"); all other items on the filing are required.
- Prescribing the use of uniform forms enables the ministerial review of the documents. Similar information is in the same place on all forms, allowing the staff to determine the completeness of the filing quickly and easily.
- The simplicity of the forms keeps the official record more consistent and concise. Forms were not prescribed for the early corporations; thus, the early filings are more diverse, are lengthier, and contain a lot of non-essential information.
- Filers sometimes include copies of bylaws, agreements or other internal governance documents with the required form, although our office cautions against this practice. After consulting with the filer, we will return bylaws without including them as part of the public record.
- If the filer insists, other extraneous documents are placed on file with the required filing document. All documents submitted are public information; thus, information of a personal or proprietary nature that is included in the documents will not be redacted or otherwise kept confidential.

II. TYPES OF FILINGS (DOMESTIC ENTITIES)

A. Origination Documents

- The origination document, once accepted by the filing office, creates the legal existence of the entity on the public record.
- Often it does not contain the names of the directors, shareholders or members other than the persons or entities executing the documents. If an entity files in January of a particular year, it may be almost 18 months before this information is placed on the public record via an annual report in June of the next calendar year.
- Clerk (Domestic Business Corporations only) or Registered Agent information:
 - Designation of Commercial (CRA) or Noncommercial (NCRA) Clerk or Registered Agent;

- If the designation is CRA, the name of the registered agent and the CRA public number must be provided;
- If the designation is NCRA, the name of the registered agent and the physical and mailing address of the agent must be provided; and
- There is a printed statement on the form that provides that the registered agent has consented to accept the appointment.
- See the *Entity Filing Summary* for additional details regarding the information found on origination documents filed with the Secretary of State.

B. Amendments

- **Articles of Amendment** (Business and Nonprofit Corporations and Limited Liability Companies) or **Certificates of Amendment** (Limited Partnerships and Limited Liability Partnerships) allow an entity to amend any item from the origination filing other than information related to the clerk or registered agent.
- **Statement of Appointment or Change of Clerk or Registered Agent (CRA or NCRA)** – the entity files the form providing the following information:
 - The name and address of the current clerk or registered agent;
 - The name of the new clerk or registered agent and address (for a CRA, the public number is needed instead of the address); and
 - A printed statement on the form that provides that the registered agent has consented to accept the appointment.
 - The form is executed by an authorized person for the entity.

C. Annual Reports

- Each foreign or domestic entity that has legal existence during a calendar year must file an Annual Report on the following June 1st to cover that previous year (i.e., the reports due June 1, 2009 are for entities that had legal existence during the 2008 calendar year).
- An Annual Report contains the following information:
 - The name of the entity;
 - A brief statement of the character of the business;
 - The address of the entity's principal office (Foreign Entities only);
 - The names of the officers, partners, general partners, managers or members (as applicable to the type of entity); and
 - The names of directors or shareholders (where applicable).

III. ENTITY NAMES

A. Types of Names

- **Real or Legal Name** – a name that must be distinguishable on the records of the Secretary of State; the name under which the entity is formally organized or as amended.
- **Assumed Name** - a trade name, the name of a division not separately incorporated and not used in conjunction with the real corporate name, or any name other than the real name of a corporation except for a fictitious name.
- **Fictitious Name** - a name adopted by a foreign corporation authorized to transact business in this State because its real name is unavailable.
- **Reserved Name** –an entity which has not yet made its origination filing may file a reserved name to “hold” the name for a nonrenewable period of 120 days.
- **Registered Name** – the name of a foreign entity not qualified to do business in Maine.

B. Name availability standard

- **“Distinguishable upon the Record”** is the name availability standard (since 7/1/03).
- The standard applies to real, assumed, fictitious, reserved and registered names.
- This standard allows the staff to make ministerial determinations of name availability, instead of the more subjective determinations of whether a name is deceptively similar to others on file.
- There are limited rules for deciding whether a name is distinguishable from others on the record:
 - Entity words are disregarded.
 - Punctuation, capitalization and special characters are disregarded.
 - The words “the” and “and” and the symbol “&” are disregarded.
- The Secretary of State still has the **authority to refuse to file a name** that:
 - consists of or comprises language that is obscene;
 - inappropriately promotes abusive or unlawful activity;
 - falsely suggests an association with public institutions; or
 - violates any other provision of Maine law with respect to names (i.e. Offensive Place Names in Title 1 §1102).

IV. FOREIGN ENTITIES

- A Foreign entity (that did not originate in Maine) shall not carry on activities in Maine until it files an application for authority to transact business with the Secretary of State (i.e. “Foreign Qualification”), or as provided by some other public law of this State.
- Certain activities are not deemed “carrying on” affairs and are specified in the applicable statutes. The filing office will not give legal advice to a foreign entity as to whether they should qualify.
- Upon acceptance of the filing for authority by the filing office, the foreign entity is authorized to carry on activities in Maine, including activities for which it is authorized under the laws of the entity’s jurisdiction, and activities that may be carried on by a domestic entity under Maine law.

V. OTHER FILING OFFICE ACTIVITY

A. Issuance of Certificates of Existence or Fact

- A Certificate of Existence states that the entity legally exists and is in good standing, if applicable, and that the Articles of Dissolution have not been filed.
- A Certificate of Fact is used to confirm one of the following circumstances:
 - that Articles of Dissolution have been filed for the entity;
 - that the entity has been administratively dissolved;
 - that a diligent search reveals no record of the existence of the entity; or
 - that the entity is no longer in existence due to a merger.

B. Administrative Dissolution

- On July 1, 2003, for business corporations, and July 1, 2004 for other entity types, administrative dissolution replaced charter suspension under the previous laws.
- The Division serves the entity with written notice of impending administrative dissolution, and the entity has 65 days from the date of the notice to correct the deficiency that resulted in the notice. After 65 days, the Division sends a notice of administrative dissolution to the entity. The entity continues its corporate existence but may not transact business except that which is necessary to wind up and liquidate its business and affairs.
- Administrative dissolution does not terminate the authority of the clerk or registered agent.

- A corporation that is administratively dissolved may reinstate within 6 years after the effective date of administrative dissolution. When a filing to correct the administrative dissolution is accepted, the reinstatement relates back to the effective date of the administrative dissolution, and the entity resumes business as if the administrative dissolution had not occurred.
- All domestic business corporations that had an administrative suspension status as of July 1, 2003, and have not been reinstated since then, will become administratively dissolved as of July 1, 2009, and will not be eligible to reinstate. Any corporation that was administratively suspended before July 1, 2003, may apply for reinstatement as long as the request is received by June 30, 2009.
- Triggers for administrative dissolution include:
 - the failure to file an annual report;
 - the failure to pay any late filing penalty;
 - the failure to maintain a clerk or registered agent;
 - the failure to notify the filing office of a change of clerk, or the change of address of the clerk or registered agent; or
 - the failure to maintain worker's compensation insurance.

VI. MODEL REGISTERED AGENT ACT

A. Main Features of the Act

- On July 1, 2008, the new Model Registered Agent Act became effective. The Act:
 - Creates two distinct classes of clerks/registered agents: **commercial and noncommercial**, with one registration procedure for both classes;
 - Creates online filing and electronic communication between the filing office and the registered agent;
 - Requires the entity appointing a clerk or registered agent to affirm that the clerk or registered agent has consented to serve (instead of the RA signing an acceptance of the appointment);
 - Creates a one-to-many relationship so that changes to a commercial clerk or registered agent's profile information (such as an address change) generates the same change to the clerk/registered agent's information in the records of all entities the commercial registered agent represents;
 - Eliminates the concept of the registered office address;
 - Creates a process for the termination of a commercial clerk or registered agent listing, which has the same effect as a resignation. The commercial clerk or registered agent must notify the entity/entities it represents of its termination; and
 - Provides for a clerk/registered agent's resignation regardless of the entity's status. The commercial clerk or registered agent must notify the entity/entities it represents of its resignation. The filing office is required to send notice to each of the commercial clerk or registered agent's represented entities of the failure to maintain a clerk or registered agent. The resignation does not take effect until the 31st day after the resignation was filed. There is no filing fee for the resignation of a commercial clerk or registered agent.

B. Service of Process:

- The Model Registered Agent Act also:
 - Creates a process for nonfiling or nonqualifying foreign entities to file a statement appointing an agent for service of process. The duration of this appointment is 5 years, and the appointment terminates if the entity becomes qualified;
 - Removes the requirement that the filing office serve as the default agent for service of process for those entities without a clerk/registered agent and provides direct service on corporate officers;

- Provides that venue in a legal action involving a particular entity is not determined by the address of the entity's clerk or registered agent; and
- Places the burden of service of process on the person seeking service.

VII. INTERACTIVE CORPORATE SEARCH

A. Searching Entity Names

- The Division's online database can be searched in real time to find existing entities. Using this service, you will be able to verify the status of the entity, view the list of records on file for the entity, download certified copies of records, and download certificates of existence.
- The Corporate Search can be found at www.informe.org/icrs/ICRS.
- The exact name of the entity is not needed to search. There are 3 ways to search for an entity:
 - using a keyword;
 - using a string of words in a name; or
 - using an entity charter number.

B. Obtaining information on existing entities

- If the searcher is looking for information on an existing entity, any of the described search techniques will generate a list of entities with names that are similar to the name searched.
- **Information Summary.** The searcher selects the "Information Summary" link next to the entity that best matches the name searched. The Information Summary contains:
 - the legal name and any assumed or former names used by the entity;
 - the charter number;
 - the type of entity and its status;
 - the filing date;
 - the jurisdiction of incorporation or organization; and
 - the name and address of the clerk or registered agent. There is no fee to view this information. For any fee service, the searcher must be a subscriber to "Interactive Corporate Services" through InforME, the Information Resource of Maine (*check with your office to see if you have an account number*).
- **List and Copies of Filings.** To review the filings for the entity and/or obtain a copy of these filings, the searcher selects the link next to "List of Filings" at the bottom of the Information Summary screen. On the "List of All Filings" screen:
 - The searcher can view or print copies of any documents on file.
 - The list is sorted by date.
 - To assist searchers, there is an indication of whether the associated image for the filing is available for downloading. If the image is not available, the system will allow the searcher to communicate directly with the Division to request the appropriate copies.
 - If the searcher needs to obtain a Certificate of Existence, the searcher selects the appropriate link next to the Certificate of Existence at the bottom of the Information Summary screen to download the certificate.

C. Status Codes

- The following are some of the commonly used status codes that may appear relating to the existence of entities:
 - ADI Administratively Dissolved (status after 2003) – for failure to comply with certain statutory requirements - entity loses its liability shield as the registered entity
 - CAN Cancelled – applies to voluntary dissolution of an LP or an LLC
 - CON Consolidated – two or more entities have been consolidated to create a new entity

- DIS Voluntarily Dissolved - applies to Business and Nonprofit Corporations
- EXC Excused from filing annual reports – entity has ceased to transact business but may resume business (applies to Domestic Business Corporations, Domestic Nonprofit Corporations & Domestic LLCs only)
- MER Merged – entity has merged into another entity
- NGS Not In Good Standing – due to pending administrative action
- REV Revoked (Foreign entities) – for failure to comply with certain statutory provisions
- RIV Revival – Dissolved Entity petitions SOS to revive for a specific reason and a specific period of time (applies to Legally Existing Domestic Entities only)
- RNN Renunciation – takes an LLP off the record, but does not affect the existence of the partnership
- SUR Voluntarily Surrendered (applies to Foreign entities only)
- SUS Administratively Suspended (status before 2003) – for failure to comply with certain statutory requirements; entity loses its liability shield as the registered entity
- VGS Good Standing – entity is in compliance with all filing requirements

VIII. CONTACT INFORMATION FOR THE FILING OFFICE

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